



# City of Carmel

## BOARD OF ZONING APPEALS

July 22, 2002

The regularly scheduled meeting was held at 7:00 PM in the Council Chambers of Carmel City Hall on July 22, 2002. Those members in attendance: Leo Dierckman, Michael Mohr, Earlene Plavchak, Pat Rice, and Charles Weinkauff, thereby establishing a quorum.

Department of Community Services Staff in attendance: Director Michael Hollibaugh, Laurence Lillig, and Code Enforcement Officer Adrienne Keeling. John Molitor, Legal Counsel, was also present.

The minutes of the March 2002, May 2002, June 6 and June 24, 2002, and July 11, 2002 meetings were approved as submitted.

John Molitor reported the Executive Session discussion was limited to the pending litigation.

Laurence Lillig noted Items 5-17j, Carmax Auto Superstores (V-54-02 through V-66-02) have been tabled.

### **J. Public Hearing:**

#### **1-2j. Lakes at Hazel Dell, Section 1, Common Area 4a (V-18-02; V-19-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

V-18-02	§25.7.02-1(b): Number & Type	2 Subdivision Signs
V-19-02	§25.7.02-1(b): Number & Type	unmatched Subdivision Signs

The site is located on the southwest corner of West Dellfield Boulevard and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Drees Homes.

#### **3-4j. Lakes at Hazel Dell, Section 1, Common Area 6 (V-20-02; V-21-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

V-20-02	§25.7.02-1(b): Number & Type	2 Subdivision Signs
V-21-02	§25.7.02-1(b): Number & Type	unmatched Subdivision Signs

The site is located on the northeast corner of East Dellfield Boulevard and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Drees Homes.

Items 1-4j were heard together.

Present for Petitioner: Joe Scimia, 600 E 96<sup>th</sup> Street, Indianapolis. The current suspended signs are hard to see at approximately 100 feet from the right-of-way. The new signs will be 12-inch brass letters on the brick wall. The Ordinance requires all signs to be similar. The square footage of the new signs and the suspended signs is below the footage permitted in the Ordinance.

Members of the public were invited to speak in favor of, or opposition to the petitions. No one appeared and the public hearing was closed.

Mr. Lillig gave the Department Report. The Department recommends the Board suspend the rules in order to vote on Items 1j and 2j simultaneously, Dockets V-18-02 and V-19-02, and Items 3j and 4j simultaneously, Dockets V-20-02 and V-21-02. The Plan Commission Subdivision Committee considered and approved Docket 29-02 ADLS Amend for the signage. The Department recommends favorable consideration of these petitions with the condition that the signs comply with the Plan Commission approval of Docket No. 29-02 ADLS Amend.

Mr. Dierckman noted that it was Special Studies who reviewed the signage. There were several remonstrators present in support and Special Studies found the signs appropriate.

Mr. Dierckman moved to suspend the rules. The motion was seconded by Mrs. Rice and **APPROVED 5-0.**

Mr. Dierckman moved to approve **V-18-02 and V-19-02, Lakes at Hazel Dell, Section 1, Common Area 4a**, with conditions. The motion was seconded by Mrs. Plavchak and **APPROVED 4-1**, with Mr. Weinkauff casting the opposition vote.

Mr. Dierckman moved to approve **V-20-02 and V-21-02, Lakes at Hazel Dell, Section 1, Common Area 6**, with conditions. The motion was seconded by Mrs. Plavchak and **APPROVED 4-1**, with Mr. Weinkauff casting the opposition vote.

5-17j. ***Tabled pending Plan Commission approval of ADLS.***

**Carmax Auto Superstores (V-54-02; V-55-02; V-56-02; V-57-02; V-58-02; V-59-02; V-60-02; V-61-02; V-62-02; V-63-02; V-64-02; V-65-02; V-66-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-54-02</i>	<i>§14.6: Landscaping Requirements</i>	15' north and east bufferyards
<i>V-55-02</i>	<i>§25.7.01-2</i>	8' traffic directional sign E1
<i>V-56-02</i>	<i>§25.7.01-2</i>	4-square-foot traffic directional sign E1
<i>V-57-02</i>	<i>§25.7.01-2</i>	8' traffic directional sign E2
<i>V-58-02</i>	<i>§25.7.01-2</i>	4-square-foot traffic directional sign E2
<i>V-59-02</i>	<i>§25.7.02-8(b)(i)</i>	five (5) identification signs (A, B, B1, C, D)
<i>V-60-02</i>	<i>§25.7.02-8(b)(ii)</i>	three (3) id signs oriented east (B, C, D)
<i>V-61-02</i>	<i>§25.7.02-8(c)</i>	193-square-foot wall identification sign A
<i>V-62-02</i>	<i>§25.7.02-8(c)</i>	193-square-foot wall identification sign C
<i>V-63-02</i>	<i>§25.7.02-8(c)</i>	78.33-square-foot ground identification sign B
<i>V-64-02</i>	<i>§25.7.02-8(c)</i>	78.33-square-foot ground identification sign B1
<i>V-65-02</i>	<i>§25.7.02-8(d)</i>	8' ground identification sign B
<i>V-66-02</i>	<i>§25.7.02-8(d)</i>	12' 3½" ground identification sign B1

The site is located on the northwest corner of East 96<sup>th</sup> Street and Gray Road. The site is zoned B-3/Business.

Filed by E. Davis Coots of Coots Henke & Wheeler for Carmax Auto Superstores, Inc.

18j. **Burton Accessory Building (V-92-02)**

Petitioner seeks approval of a Developmental Standards Variance of *Section 25.1.1(B)(1): Maximum Height* in order to construct a 19' 10" accessory building.

The site is located at 3227 East 136<sup>th</sup> Street. The site is zoned R-1/Residence.

Filed by J. Scott Burton.

Mr. Lillig reported the Department recommends this Item be Dismissed for Lack of Prosecution. The Petitioner has not responded to the comments of the Technical Advisory Committee made at the May 22, 2002, meeting; the Petitioner has not filed Informational Packets as required; the Petitioner has not paid the filing fee; and the Petitioner has not provided Proof of Notice. He stated that the Petitioner was present to make a case for why this should not be dismissed at this time.

Public Hearing closed.

Petitioner, Mr. Burton, 3227 E. Smokey Row Road or E. 136<sup>th</sup> Street was present. Title search did not indicate this property was covered by the Brentwood Subdivision covenants and restrictions. Upon giving notice to the Brentwood Subdivision residents, several neighbors thought this property was located in Brentwood and should follow the Brentwood covenants. He is waiting to resolve the Brentwood issue. Therefore, he has not turned in the proper documentation.

Mr. Lillig stated if that is case, the Department does not have any objection if the Board is willing to continue this to a future meeting, so long as the Petitioner makes the effort to keep the Department apprised of the progress. The Department will need to know in advance if the Petitioner is expecting to be on the August 26, 2002, agenda.

Mr. Burton stated that it was his intention to have the matter resolved before the deadline for the August meeting.

Mr. Lillig stated the Department is willing to proceed under the assumption that this Item will remain tabled until they hear from the Petitioner.

**19-22j. Meridian Mark III, Lot 1 (V-93-02; V-94-02; V-95-02; V-96-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-93-02</i>	§25.7.01-4(l)	Spring Hill Suites off-premise
<i>V-94-02</i>	§25.7.02-11(c)	28-square-foot Multi-tenant Building Complex Directory Sign
<i>V-95-02</i>	§25.7.02-11(d)	eight-foot (8') Multi-tenant Building Complex Directory Sign
<i>V-96-02</i>	§25.7.02-11(e)	<10' minimum setback

The site is located at 11895 North Meridian Street. The site is zoned B-6/Business within the US 31/Meridian Street Corridor Overlay Zone.

Filed by Michael W. Wells of REI Investments, Inc.

Present for Petitioner: Julie Christiansen, REI Investments, 11711 N. Pennsylvania, Carmel. At the last Special Studies meeting adjustments were made. The sign was extended another six (6) inches and red brick used to match the sign at Residence Inn. The entry road serves two (2) properties with boulevard-type effect at the entry with landscape islands separating outgoing and incoming traffic. This technically sets within the right-of-way.

Members of the public were invited to speak in favor of, or opposition to the petitions. No one appeared and the public hearing was closed.

Mr. Lillig gave the Department report. These Items were also the subject of an ADLS Amendment petition, Docket 73-02 ADLS Amend, before the Plan Commission. At the July 2, 2002, meeting, the

Special Studies Committee approved the petition with conditions regarding the design of the sign that were outlined by Mrs. Christiansen. Docket V-95-02 requests an eight (8) foot sign and should be amended in the record to request for a seven and one-half (7 ½) foot Multi-tenant Building Complex Directory Sign. Docket V-96-02 should be amended to request for an encroachment into the right-of-way, rather than a reduction of the minimum setback. The Department is recommending favorable consideration of these petitions with the following conditions: that the sign comply with the conditions of Docket 73-02 ADLS Amend; that the Petitioner get consent to encroach approval from the Board of Public Works and Safety; and the Petitioner submit commitments for removal of the sign should the City ever require to do work in that segment of the right-of-way.

A picture of the area was viewed, showing existing buildings and location for the sign.

Mr. Weinkauff moved to approve **V-93-02, Meridian Mark III, Lot 1**. The motion was seconded by Mrs. Rice and **APPROVED 5-0**.

Mr. Dierckman moved to approve, with conditions, **V-94-02, Meridian Mark III, Lot 1**. The motion was seconded by Mrs. Rice.

Discussion followed regarding the height of the sign and the size of the letters. Mrs. Christiansen affirmed the lettering would be adjusted and made proportionate to fit the 7 foot 6 inch sign.

The motion for **V-94-02, Meridian Mark III, Lot 1** was **APPROVED 5-0**.

Mr. Dierckman moved to approve, with conditions and amendments, **V-95-02, Meridian Mark III, Lot 1**. The motion was seconded by Mrs. Rice and **APPROVED 5-0**.

Mr. Dierckman moved to approve, with conditions and amendments, **V-96-02, Meridian Mark III, Lot 1**. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

**23-24j. Pilgrim Lutheran Church (SU-140-02; V-141-02)**

Petitioner seeks Special Use approval under *Section 5.2: Special Uses* of the conceptual plan for a church on 20.6± acres. In addition, the petitioner seeks approval of a Development Standards Variance of *Section 21.2.7: Time Limit* in order to extend the deadline for commencement of continuous construction to five (5) years.

The site is located northwest of the intersection of West 106<sup>th</sup> Street and Shelborne Road. The site is zoned S-1/Residence - Very Low Density.

Filed by Charles D. Frankenberger of Nelson & Frankenberger for Pilgrim Lutheran Church.

Present for Petitioner: Jim Nelson, Nelson & Frankenberger, 12481 Medalist Parkway, members of the congregation and members of the site selection committee. Presently the church is located at 103rd & Meridian Streets in the northwest quadrant of U.S. 31 and I-465. In planning for future re-location, the church has agreed to purchase a 20 acres parcel located at 106<sup>th</sup> Street and Shelborne Road. The Special Use is for church use only of this parcel. No construction will begin until the church reappears before this Board with construction plans in the form of a Special Use Amend application. The Developmental Standards Variance is requested to extend the deadline for commencement of construction. The church has been at the current location for 50 years and has seen substantial development around its existing location. The need to plan for relocation arises out of plans by the State of Indiana to improve the ramp system at I-465 & U.S. 31, utilizing church property. In order to survive, the church believes it must plan for relocation today. The church has chosen to acquire land, but does not know what the physical needs

will be nor what it can afford. A conceptual development plan was provided, showing sanctuary, fellowship hall, multi-purpose facility, parking, and some space for recreational purposes. The requested variance is for August 1, 2007, or one year from the date the Church comes back before the Board.

Members of the public were invited to speak in favor of, or opposition to the petitions. No one appeared and the public hearing was closed.

Mr. Lillig gave the Department Report. The petition has gone to Technical Advisory Committee for preliminary review and the Petitioner has been apprised of several items that will become an issue once they are ready to develop this site. In the future they will come back to the Board of Zoning Appeals for Special Use Amendment approval when they have prepared specific plans and are ready to move from the existing facility on North Meridian Street. The Department recommends favorable consideration of these petitions with the Condition that the fifty-foot half right-of-way for West 106<sup>th</sup> Street be dedicated once the church has acquired the property.

Mr. Weinkauff wanted to go on record that a church should not have to go through all of the red tape and expense to achieve what is already something they basically have the right to do, as churches are allowed in an S-1 area.

Mrs. Plavchak moved to approve, with condition, **SU-140-02, Pilgrim Lutheran Church**. The motion was seconded by Mr. Weinkauff and **APPROVED 4-0**, with Mr. Dierckman abstaining.

Mr. Weinkauff moved to approve **V-141-02, Pilgrim Lutheran Church**. The motion was seconded by Mrs. Rice and **APPROVED 4-0**, with Mr. Dierckman abstaining.

**25-26j. Edmo's Ammo & Guns (V-142-02; V-143-02)**

Petitioner seeks approval of the following Development Standards Variances:

V-142-02     §25.7.02-8(b)(i): *Number & Type*     two (2) Identification Signs

V-143-02     §25.7.02-8(e): *Location*     setback from Proposed West Smokey Row  
Road right-of-way

The site is located at 20 West Smokey Row Road. The site is zoned B-2/Business.

Filed by Richard W. Edmonson.

Present for Petitioner: Richard W. Edmonson, 15396 N. Gray Road, Noblesville, IN. When he purchased the property, he replaced the existing signs with new lettering without permits. In January he received notice that the signs were in violation and he is trying to make them right. Building sets back off the street and is hard to see, making the ground sign very important.

Members of the public were invited to speak in favor of, or opposition to the petitions. No one appeared and the public hearing was closed.

Mr. Lillig gave the Department Report. The Department is recommending favorable consideration of these petitions with the condition that the address on the signs be changed from "20 8<sup>th</sup> Street NW" to "20 West Smokey Row Road" in accordance with the officially recognized principal name of this road segment. This is an oddly shaped piece of property and the Department believes there is a hardship with respect to identification, given the position of this building and the amount of road frontage that is available.

Mr. Dierckman agreed it is difficult to locate the building. This additional signage is needed.

Mr. Edmonson has had problems with mail delivery to the address of 20 West Smokey Row Road.

Mr. Lillig stated the Post Office has known about this being the primary designation for that street by the Board of Public Works since April. The Postmaster has been notified and he is notifying his employees.

Mr. Weinkauff asked why V-143-02 was needed?

Mr. Lillig stated the signs are required to be set back from the proposed right-of-way in the thoroughfare plan. The sign is outside the existing right-of-way, but it would be setting within the proposed right-of-way. The sign would need to be moved at the owner's expense if the City acquires the existing right-of-way.

Mr. Dierckman moved to approve, with conditions and commitments, **V-142-02, Edmo's Ammo & Guns**. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

Mr. Dierckman moved to approve, with conditions and commitments, **V-143-02, Edmo's Ammo & Guns**. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

**27j. WTF - Sprint Spectrum (A-111-01)**

Appellant wishes to appeal the decision of the Director regarding the revocation of Improvement Location Permit No. 627.01b for a wireless telecommunications antenna on an existing private radio tower.

The site is located at 1388 Queen's Way. The site is zoned S-1/Residence – Very Low Density.

Filed by Thomas F. Bedsole of Locke Reynolds for Sprint Spectrum.

Present for Petitioner: Richard Nikchevich, 333 W. Wacker Drive, Chicago, IL; Tom Bedsole of Locke Reynolds, 201 N. Illinois Street, Indianapolis; and John Buchert, 600 N. River Road, Rosemont, IL.

Mr. Nikchevich stated that this appeal centers on a legal question: Was plat approval required in connection with the issuance of the Building Permit and if so, was it appropriate for the Director to, after the fact, apply that standard in revoking Sprint's Building Permit?

John Buchert handles Site Development Activities for the Indianapolis market for cell site development for Sprint. Sprint currently has a 5-year lease with Dr. Zamber that has 5 automatic renewal options, subject to exercise by Sprint. Sprint has no permanent easement or real estate interest in the property. The legal description describes the property owned by Dr. Zamber as approximately five and one-half acres and this was confirmed with a survey of the property.

Mr. Nikchevich asked the Director, Michael Hollibaugh, if subdivision control was an issue when the building permit was issued?

The BZA Board had some concerns with examination or cross-examination of witnesses during a presentation. Mr. Molitor stated it is permitted during Board of Zoning Appeals proceedings.

Mr. Hollibaugh stated it became an issue when the Department determined that issue had been missed and should be addressed. He did not know if subdivision approval had been required for other cell sites or leasehold interests. He stated that he did not have a great deal of experience relating to these issues.

Mr. Nikchevich stated a Board or Director has only those powers accorded to it under State Law. State Law does accord power over subdivision control, but in order for that control to exist there must be a subdivision. A leasehold interest does not create a division. Therefore, there is not authority to regulate this site under subdivision control basis. This gives cause to revoke Mr. Hollibaugh's revocation of the Building Permit.

Under the City Ordinance there are two (2) prerequisites for a subdivision. First, there must be a recorded division and there has been no recorded division of this property. Secondly, there has to be a creation of two (2) or more parcels. That has not occurred in this matter. Hence, under a plain reading of the Ordinance, there has not been a subdivision. This then must be applied to other leaseholds and cell towers. Subdivision control applied to collocation of antenna would defeat the Ordinance's primary goal to promote collocation. None of the matters that have come before the Plan Commission for plat approval have involved cell towers. Therefore, like carriers must be treated consistently.

Members of the public were invited to speak in favor of, or opposition to the petitions. No one appeared and the public hearing was closed.

Mr. Molitor gave the Department Report. The difficulty that occurred when this permit first came in was that the Department was unaware a new access easement would need to be created. This was a difficulty whether it was recorded or whether it would be leased to a separate tenant. The problem created was a mix of uses, conversion from residential to commercial use. Perhaps this issue is moot, now that the Board has ruled at its last meeting that the conversion of this site to a cell tower site requires a Use Variance or the minimum, a Special Exception.

Mr. Dierckman asked for the Department's recommendation. Is a subdivision required or not?

Mr. Molitor responded that the Jeffersonville case that was cited was about leasing sites for mobile homes and did not create a separate access easement. This case creates a separate access easement and he agrees that a plat would be required.

Rebuttal:

Mr. Nikchevich stated the Jeffersonville case did involve a mobile home park. The park and the pads within the park do not set on a street and do need a right of access. The Zamber site easement is an easement or right of access contained within a lease document. According to the Jeffersonville case that sort of interest is not subject to subdivision control. There are not two (2) recorded parcels and the Ordinance cannot be applied. Easement in and of itself does not create a subdivision.

Mr. Buchert stated leases for cell sites need a means of access in almost every case.

Mr. Nikchevich stated the Ordinance does not apply. Irrespective of whether there is an easement or not, that is only one sub-part of a multi-part test under Subsection two. And it is clear that the other two parts are not satisfied.

Discussion followed regarding collocation and subdividing for commercial use in this area.

Mr. Dierckman moved to approve **A-111-01, WTF - Sprint Spectrum**. The motion was seconded by Mr. Weinkauff.

No Findings of Fact could be located.

Mr. Lillig stated specific Findings of Fact do not come with an Appeal.

Mr. Molitor stated the appellants had submitted a proposed Findings of Fact when this appeal was first submitted last year.

Findings of Fact were discussed and it was decided the Board would like the proposed Findings from last fall.

Mr. Weinkauff moved for a 10-minute recess. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

Mrs. Rice stated from reading the Findings of Fact, it seemed they were putting the cart before the horse and asking the Board to rearrange. It appears they did not go through the proper channels.

Vote on **A-111-01, WTF - Sprint Spectrum, DENIED 0-5.**

**K. Old Business.**

There was no Old Business on the July 22, 2002, agenda of the Board of Zoning Appeals.

**L. New Business.**

**1L. Emerald Crest at Hazel Dell Summit Amenity Area (SU-13-00)**

The Department of Community Services seeks clarification of the Special Use approval granted July 24, 2000, per *Section 5.2: Permitted Special Uses* in order to establish a private recreational facility.

The site is located northwest of East 131<sup>st</sup> Street and Hazel Dell Parkway. The site is zoned S-1/Residence - Low Density.

Mr. Lillig reported that in April 2000, a petition was brought before the Board for an amenity area in the Emerald Crest at Hazel Dell Summit Subdivision. At that hearing the petition was tabled to give the Petitioner sufficient time to revise the landscape plan. The Petitioner came back to the Board in July and the petition was approved with 2 conditions. The first had to do with lifeguarding and the second had to do with Department approval of the landscape plan. The landscape plan submitted in July was identical to the one the Board had rejected in April. Since July 24, 2000, the Petitioner has not submitted a revised landscape plan, but has put in landscaping on the site that is consistent with the rejected April 2000 plan. The Department has received several complaints from nearby property owners about this situation. Mr. Lillig distributed a copy of his letter to the Petitioner regarding the course of action the Department would like to see the Petitioner follow to resolve this issue. The letter set a deadline of August 9, 2002, for the revised landscape plan that meets the requirements of *Section 26.4: Perimeter Landscape Buffering Requirements* and that plan would be subject to the review and approval of Scott Brewer, the Urban Forester. Photos included in the Department Report show the landscaping which has been installed. From the photos, there is not sufficient landscaping to buffer this use from the adjacent lots. The Department is requesting that the Board affirm their decision of July 2000. This is an Administrative matter and the Department is requesting the Board's support in case the Petitioner comes back and suggests the Department is misinterpreting the Board's intention.



Discussion was held regarding the ability to enforce the Ordinance with fines or closing down the operation.

Mr. Molitor stated violation of a zoning ordinance could be charged on a daily basis. It is up to a judge to impose the fines, if the violation can be proved.

The Department feels this is Davis' responsibility and not the homeowner's association because the subdivision is not completely developed.

Mrs. Rice moved to begin the process for fining Davis Homes as soon as possible and for the Department to be as aggressive as possible in enforcing this violation. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

**M. Adjourn.**

Mr. Dierckman moved the meeting be adjourned. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0.**

Meeting was adjourned at 9:30 PM.

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Michael Mohr, President

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Connie Tingley, Secretary